IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6527 OF 2007

Smt. Kachribai w/o Lukha Joshi.... Petitioner

versus

Pandurang Shankar Choudhary ..... Respondent.

Shri D.K.Ghaisas for the petitioner.
Shri Amol Mhatre for respondents 1 and 2.

CORAM; A.P. DESHPANDE, J.
DATED; 04TH OCTOBER, 2007

P.C.;

1. The present petitioner instituted a regular Civil Suit No.596/90 for declaration and perpetual injunction. The declaration sought by the petitioner is that the petitioner is the owner of the suit land whereas the case of the respondent/defendants is that the mother of the plaintiff has entered into an agreement with the defendants for sale of the suit land and the defendants have been put in possession of the property in part performance of the said agreement. In the first instance, the suit came to be decreed in favour of the present petitioner. However, in an appeal, the judgment and decree passed by the trial court came to be set aside and the matter was remanded for re-trial as the trial court had not

framed the issues in regard to the ownership of the suit land. The Appellate Court had permitted the parties to lead additional evidence. Acting pursuant to the express liberty granted by the Appellate Court, the learned counsel for the petitioner submits that the plaintiff did not lead any evidence. However, the defendant nos. 1 and 2 being desirous of leading further evidence have examined the Power of Attorney holder. It appears that the plaintiff raised objection to the evidence of the Power of Attorney holder by placing reliance on a judgment in case of **Janki Bhojwani's case reported in AIR 2005, S.C. page 439.** Realising the difficulties that may crope up in regard to the truth of the contents of the three agreements, which have been held to be formerly proved, the defendants 1 and 2 moved an application with a view to examine the defendant no. 2 as witness after the remand. The petitioner objected to the prayer made in the application. Over-ruling the objection raised by the petitioner/plaintiffs, the trial court has permitted examination of defendant no.2. What is to be noted is that under the liberty granted by the Appellate Court, it is open for the defendants to lead further evidence. What could be objected by the plaintiff is that defendant no.2 did not examine himself prior to the examination of Power of Attorney holder. Thus the case falls under Order

18 Rule 3-A of CPC. The said provision is not mandatory but directory in nature. The Court can permit the party to examine himself after examination of other witnesses. In the present case exercising discretion in favour of the defendant nos.1 and 2, the trial court has granted the said permission. The trial court has observed that for an effective and complete adjudication of the issue involved in the suit, it is desirable to permit the defendant no.2 to examine himself and thus allowed the application.

4. Perused the impugned order. The same does not call for any interference . According to the learned counsel for the petitioner the case falls under Order 18 Rule 17 of CPC and hence the trial court could not have deviate from the procedure laid down under CPC. Reliance is also placed on a judgment of the learned Single Judge of this Court reported in **2003(2) ALL MR 444.** The reliance placed on the said judgment is misconceived as the case does not fall under Order 18 Rule 17. Thus there being no merit in the petition, the same is summarily dismissed.

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